

## **REMARKS**

Applicants have canceled claims 1-8 and added new claims 9-11. Thus, claims 9-11 are pending in the subject application. Support for new claims 9-11 can be found, for example, in paragraphs [0030-32] and FIGS. 1 and 2. No new matter has been added to the application by virtue of the present response.

### **Claim to Foreign Priority**

Applicants respectfully submit that the requirements for a claim to foreign priority have been fulfilled.

Applicants' claim to foreign priority was made in the Application Data Sheet filed on 11/21/2002 when the present application was filed. The claim to foreign priority was recognized in the first official filing receipt of 12/16/2002 for the present application. A certified copy of the EP01480118.7 application as required by 35 U.S.C. 119(b) was mailed to the USPTO on 08/28/2006 and was received and accepted by the USPTO on 08/31/2006 (see PAIR system).

Therefore, Applicants respectfully request that the Examiner acknowledge that the claim to foreign priority has been fulfilled and that the certified copy of the priority document has been received.

### **Objection to the Specification**

The Examiner objected to paragraph [0011] due to an informality. Applicants have amended paragraph [0011] as suggested by the Examiner.

Therefore, Applicants believe that the objection to the Specification has been overcome.

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### **Claim Objections**

The Examiner objected to claims 1, 2, 3 and 5 because of informalities. Applicants have canceled claims 1, 2, 3 and 5. Applicants have incorporated the Examiner's suggested corrections for canceled claims 1, 2, 3 and 5 in new claims 9-11. Therefore, Applicants believe that the objections to the claims have been overcome.

### **Claim Rejections - 35 U.S.C. 112, second paragraph**

The Examiner rejected claims 1-5 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have canceled claims 1-5. Applicants have incorporated the Examiner's suggested corrections for canceled claims 1-5 in new claims 9-11. Therefore, Applicants believe that the rejection under 35 U.S.C. 112, second paragraph, has been overcome.

### **Provisional Double Patenting Rejection - 35 U.S.C. 101**

The Examiner provisionally rejected claims 1-4 and 8 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4 and 9 of co-pending U.S. patent application serial no. 10/065,809.

Applicants have canceled claims 1-4 and 8. New claims 9-11 are directed to a method of scheduling data packets so they are not co-extensive in scope with claims 1-4 and 9 of co-pending U.S. patent application serial no. 10/065,809.

Therefore, Applicants believe that the provisional double patenting rejection under 35

U.S.C. 101 has been overcome.

### **Claim Rejections - 35 U.S.C. 102 (e)**

The Examiner has rejected claims 1-8 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,680,933 (Cheeseman).

Applicants have canceled claims 1-8. Thus, the rejection of claims 1-8 as being anticipated by Cheeseman is moot.

Regarding Applicants' new claims 9-11, Applicants believe that Cheeseman would not anticipate claims 9-11. Support for Applicants' new claims 9-11 can be found in the present application, for example, in paragraphs [0030-0032] and FIGS. 1 and 2. Referring to FIG. 1 of the present application, Applicants' claimed invention includes queue scheduling mechanism 10 which comprises several queue devices 12, 14, 16 and 18 which are associated with priority ranks  $P_0$ ,  $P_1$ ,  $P_2$  and  $P_3$ . Thus, all of the priority ranks  $P_0$ ,  $P_1$ ,  $P_2$  and  $P_3$  are associated with a specific queue scheduling mechanism 10. Credit device 28 provides at each packet cycle a value  $N$  defining the priority rank to be considered by the queue scheduler 20. The considered priority rank is selected based on a pre-determined value related to all of said priority ranks  $P_0$ ,  $P_1$ ,  $P_2$  and  $P_3$  (e.g. a percentage of occurrence of the considered priority rank amongst all of the priority ranks) which are associated with the queue scheduling mechanism 10. In this way, a minimum service rate for any one of the priority ranks  $P_0$ ,  $P_1$ ,  $P_2$  and  $P_3$  (e.g. lowest priority) is provided even when there are other priority ranks (e.g. highest priority) which need to be served. Thus, queue scheduling mechanism 10 serves the data packet queue based on the priority ranks  $P_0$ ,  $P_1$ ,  $P_2$  and  $P_3$  which are associated with the queue scheduling mechanism 10, and does not just serve the highest priority rank  $P_0$  first until it is empty and then moves on to the next priority rank  $P_1$ , etc. Applicants' claimed invention avoids congestion with data packets with a specific priority rank (e.g. lowest priority rank data packets) since a minimum service rate is provided for even

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the lowest priority rank associated with queue scheduling mechanism 10.

Applicants respectfully submit that Cheeseman would not anticipate, teach or suggest Applicants' new independent claim 9, or claims dependent thereupon. Cheeseman does not disclose Applicants' limitation of "... receiving from a credit device at each packet cycle a value N defining the priority rank to be considered by said queue scheduler, the considered priority rank is selected based on a pre-determined value related to all of said priority ranks which are associated with said queue scheduling mechanism ...". Rather, Cheeseman (see FIG. 9) discloses a queue scheduling mechanism 144a which includes cascaded queue schedulers  $P_{144}$  and  $W_{144}$  having priority ranks p0, p1, p2, p3 and H,  $S_{B1}$  and  $S_{B2}$ , respectively. Thus, priority ranks p0, p1, p2, p3, H,  $S_{B1}$  and  $S_{B2}$  are associated with queue scheduling mechanism 144a. Cheeseman discloses that queue scheduling mechanism 144a serves the higher priority ranks p0, p1, p2, p3 first, and only when they are empty does queue scheduling mechanism then serve the lower priority ranks H,  $S_{B1}$  and  $S_{B2}$  (see column 12, line 63 - column 13, line 9). Cheesman is silent on a credit device which selects the priority rank based on a pre-determined value related to all of the priority ranks p0, p1, p2, p3, H,  $S_{B1}$  and  $S_{B2}$ . Queue scheduling mechanism 144a of Cheeseman does not provide for a minimum traffic flow for the lowest priority rank data packets since the highest priority rank data packets will always be served first resulting in congestion in the data packet transmission system.

Therefore, Applicants believe that the rejection of the claims under 35 U.S.C. 102(e) has been overcome and it is respectfully requested that the pending claims be passed to issuance in view of the amendments and remarks.

### **Claim Rejections - 35 U.S.C. 103**

The Examiner has rejected claims 3-7 under 35 U.S.C. 103(a) as being unpatentable over

U.S. Patent No. 6,680,933 (Cheeseman) in view of U.S. Patent No. 6,721,273 (Lyon).

Applicants have canceled claims 3-7. Therefore, the rejection of claims 3-7 as being unpatentable over Cheeseman in view of Lyon is moot.

As discussed herein above, Applicants believe that Cheeseman would not anticipate, teach or suggest new independent claim 9. Further, Applicants believe that Lyon would not remedy the deficiencies in Cheeseman. Lyon discloses a queue scheduling mechanism which utilizes “simple priority scheduling”, wherein a higher priority queue is served first until it is empty, then the next lower priority is served (see column 7, lines 39-53 and FIG. 6 of Lyon). Lyon is silent on a method of scheduling data packets by a queue scheduling mechanism as claimed by Applicants. Thus, Applicants respectfully submit that the combination of Cheeseman and Lyon would do not teach or suggest new claims 9-11.

Therefore, Applicants believe that the rejection of the claims under 35 U.S.C. 103(a) has been overcome and it is respectfully requested that the pending claims be passed to issuance in view of the amendments and remarks.

## CONCLUSION

In light of the foregoing remarks, all of the claims now presented are believed to be in condition for allowance, and Applicants respectfully request that the outstanding objections be withdrawn and this application be passed to issue at an early date.

The Examiner is urged to call the undersigned at the number listed below if, in the Examiner's opinion, such a phone conference would aid in furthering the prosecution of this application. No fees are due by virtue of the present response, however, please charge Applicants' deposit account, 09-0456, for any fee that the PTO determines is due.

Respectfully Submitted,

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